



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with the tenant's application, filed on February 28, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 18, 2023, and effective April 30, 2023 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the landlord's wife, the landlord's daughter, the landlord's daughter's partner, the landlord's agent, and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 51 minutes. This hearing began at 9:30 a.m. with only me, the landlord's agent, and the tenant present. The landlord and his family (his wife, daughter, and daughter's partner) called in late at 9:32 a.m. I did not discuss any evidence in the absence of the landlord and his family. This hearing ended at 10:21 a.m.

The landlord's agent and the tenant confirmed their names and spelling. The landlord's daughter's partner provided the names and spelling for him, the landlord and his family. The landlord's agent and the tenant provided their email addresses for me to send this decision to both parties after this hearing.

The landlord's daughter's partner stated that he and the landlord's agent had permission to represent the landlord at this hearing. He identified the landlord's agent as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord's agent and the tenant separately affirmed, under oath, that they would not record this hearing. At the outset of this hearing, the landlord's daughter's partner affirmed that neither he, nor the landlord's family, would record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or represent them as their agent or advocate. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they wanted to settle this application, and they did not want me to make a decision. Both parties discussed settlement at the beginning and end of this hearing.

I repeatedly cautioned the tenant that if I granted the landlord's application, I would uphold the landlord's 2 Month Notice, end the tenant's tenancy, and issue a two (2) day order of possession against the tenant. The tenant repeatedly affirmed that he was not prepared for the above consequences if that was my decision. The tenant repeatedly affirmed that he wanted to settle this application with the landlord, even though the landlord wanted to discuss a date to end his tenancy, but he wanted to discuss more time to move out of the rental unit.

I repeatedly cautioned the landlord, his family and his agent that if I cancelled the landlord's 2 Month Notice, I would not issue an order of possession to the landlord against the tenant, and this tenancy would continue. The landlord's agent repeatedly affirmed that the landlord wanted to settle this application with the tenant. The landlord's agent repeatedly affirmed that the landlord would discuss a later end of tenancy date, to provide the tenant more time to move out, since the tenant requested same.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served

with the tenant's application and the tenant was duly served with the landlord's evidence.

The landlord's agent stated that the tenant was served with the landlord's 2 Month Notice on February 18, 2023, by way of email. The tenant confirmed receipt of the notice on the above date by way of the above service method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

### Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During this hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute, except for the filing fee.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the filing fee:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2023, by which time the tenant and any other occupants will have vacated the rental unit;
2. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application, except for the filing fee.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the filing fee. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute, except for the filing fee.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 51-minute hearing. Both parties were provided with ample and additional time during this hearing to think about, discuss, negotiate, and decide about the above settlement terms.

The landlord, his family, and his agent were all given ample and additional time during this hearing to speak privately about the above settlement terms. The landlord's agent and the landlord's daughter's partner affirmed that they had permission to make the above agreement on behalf of the landlord.

### Filing Fee

Both parties did not settle the tenant's application to recover the \$100.00 filing fee. The tenant asked that I make a decision about it.

The filing fee is a discretionary award usually issued by an Arbitrator after a full hearing is conducted on the merits of the applicant's application, a decision is made by the Arbitrator, and the applicant is successful.

Both parties settled the tenant's application at this hearing. I was not required to conduct a full hearing or make a decision on the merits of the tenant's application. For the above reasons, I dismiss the tenant's application to recover the \$100.00 filing fee, without leave to reapply.

### Conclusion

I order both parties to comply with all of the above settlement terms.

To give effect to the settlement reached between the parties and as discussed with both parties during this hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2023, as per condition #1 of the above agreement. The tenant must be served with a copy of this Order. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 11, 2023

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Residential Tenancy Branch